IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6854 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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J M SHAH JUNIOR CLERK

Versus

SECRETARY

Appearance:

MR YN OZA for Petitioner.

MR DA BAMBHANIA for Respondent No. 1,3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 21/06/2002

ORAL JUDGEMENT

The petitioner, in this petition filed under Article 226 of the Constitution of India, has challenged the order of termination passed by the respondent authorities on 17.9.1991 on the ground that the said order was passed without giving any opportunity of hearing and that the said order was contrary to law, illegal, improper and violative of Articles 14 and 16 of the Constitution of India and hence the petitioner has prayed for quashing and setting aside of the said order.

2. The petitioner was appointed on 20th April 1983 on the post of Junior Clerk on probation in the office of the respondent and thereafter the petitioner came to be confirmed in the year 1984. The petitioner was thereafter posted at Surat in the year 1988 and given additional charge of the post of Despatch Clerk. The petitioner was thereafter suspended from the service on 20th September 1990 and chargesheet was issued on 10th December 1990. It was alleged against the petitioner that the petitioner has misappropriated certain amounts while working as Despatch Clerk in respect of postal charges. An enquiry was conducted against the petitioner and the Enquiry Officer has given his report on 21st August 1991 holding the petitioner was guilty of misconduct in respect of charges levelled against him. In all 7 charges were levelled against the petitioner. The first charge levelled against the petitioner was in respect of misappropriation of an amount of Rs. 23.70 ps. The petitioner has not sent any letter by Registered AD post and yet it was entered in the stamp register. The three articles were sent through the Registered AD post and postal stamps for Rs. 23.70 ps. were affixed. The Inquiry Officer has found that the said charge was proved against the petitioner and this charge of misappropriation is proved against him. The second charge levelled against the petitioner was that he has sent two separate letters in one envelope by Registered AD post and yet stamp expenses for two different envelopes were debited in the stamp register. Similarly, charges No. 5 & 7 are also proved against the petitioner. The charge No.5 was in respect of tampering with the document pertaining to economic transactions and charge No.7 was in respect of illegal retention of the amount of the respondent with him which was contrary to the rules and regulations framed by the respondent Board. On the basis of the charges proved against the petitioner, the Disciplinary Authority has issued show cause notice on the petitioner.

3. On the basis of the enquiry report and after considering reply and other documents produced by the petitioner the disciplinary authority has passed an order on 17.9.1991 terminating the services of the petitioner from the respondent Board. This order is under challenge before this Court. The above petition was admitted on 26.9.1991. However, this Court was not inclined to grant any interim relief. The respondents had appeared through their advocate and filed affidavit-in-reply on 8.7.1993. The petition was opposed by the respondent on the ground that the petitioner was arraigned for the charges of

embezzlement of funds and was placed under suspension and after due process of inquiry the petitioner was held guilty. However, looking to the age and post, on sympathetic consideration, the petitioner was awarded punishment of stoppage of 2 increments vide orders dated 15.4.1988. The petitioner was again put under suspension vide order dated 20.9.1990. The said order was challenged before this Court by the petitioner in Special Civil Application No. 7219 of 1989 which was rejected and directions were given to the respondents to complete the inquiry as early as possible preferably on or before 30th April 1991. It was further contended in the affidavit-in-reply that after following due procedure of law and after affording opportunity to the petitioner the Inquiry Officer had conducted the enquiry and thereafter the disciplinary authority has passed the order of termination and the said order can in no way be considered as illegal order and was passed in violation of principles of natural justice.

4. Heard Mr. Shukla, ld. advocate appearing for Mr. Y.N. Oza, ld. Senior Counsel for the petitioner and Mr. Bhambhania, ld. advocate appearing on behalf of the respondents. Mr. Shukla has mainly submitted that no proper opportunity was given to the petitioner and that inspite of several requests for furnishing the documents on which reliance was placed by the respondents the said documents were not given to the petitioner. It was further submitted that while passing the order of termination the respondent authorities have taken into consideration the past conduct of the petitioner for which no separate notice was issued. It was further submitted that the petitioner was holding the additional charge and no irregularity or illegality was committed by him. The charge of misappropriation or embezzlement was also not proved against him. It was further submitted that everything was within the knowledge of the Executive Engineer and his presence was necessary during the course of inquiry. However the Executive Engineer did not remain present at the time of inquiry. Lastly, it was submitted that looking to the amount involved, the punishment given to the petitioner was too harsh and virtually it brought the economic death of the petitioner and hence a sympathetic view should have been taken and if this court has come to the conclusion that the petitioner is held to be guilty of misconduct in that case also lesser punishment should be awarded to the petitioner. Mr. Bhambhania, ld. advocate appearing for the respondents has submitted that the charges levelled against the petitioner were proved and challenge to the punishment awarded by the disciplinary authority should

not be entertained. He has further submitted that the charge of misappropriation is a very serious charge and no establishment can afford to have the services of the petitioner who is thoroughly dishonest and play fraud with the records of the organisation. It is further submitted by him that the respondent Board is virtually closed and most of the employees were relieved under the voluntary retirement scheme and hence even on that ground also neither any order of reinstatement or awarding lesser punishment should be passed by this court.

5. I have gone through the records and pleadings of the parties. I have also gone through the documents attached along with the petition as well as the affidavit-in-reply. I have heard the ld. advocates for the respective parties at length. It is found that the charges No. 1 to 5 and 7 were proved against the petitioner and certain admissions were also there insofar as the charges are concerned. These charges are of very serious nature and it would amount to misappropriation and playing fraud and tampering with the documents and relevant materials of the respondent Board. Looking to the gravity of these charges it is immaterial as to whether the amount involved is small or large. In this connection, my attention was drawn to the judgment of the Apex Court in the case of U.P. State Road Transport Corpn. and others vs. A.K. Parul reported in AIR 1999 S.C. 1552, wherein following earlier judgment of the Supreme Court in the case of State Bank of India v. Samarendra Kishore Endow (1994) 2 SCC 537, it was held that imposition of proper punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it, but not to the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The High Court, having found the charges proved, is not justified in interfering with the punishment imposed by the disciplinary authority.

6. My attention is further invited to the decision of the Apex Court in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) Etc. Vs. Secretary, Sahakari Noukarara Sangh etc., reported in AIR 2000 SC 3129, wherein it is held that once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstalling the employees in service. It is further held that in case of proved misappropriation, there is no question of considering past record. It is

the discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute the penalty imposed by the employer in such cases. Mr. Bhambhania, on behalf of the respondents has also cited the decision of the Apex Court in the case of B.C. Chaturvedi v. Union of India and others, reported in AIR 1996 S.C. 484, wherein it is held that the disciplinary authority and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

7. On the basis of the aforesaid judgment of the Apex Court and on the basis of the facts on record, I am of the view that the order passed by the respondent authorities does not call for any interference by this Court. It is an admitted position that the disciplinary authority has found the petitioner as guilty of misconduct. The inquiry proceedings were not challenged by the petitioner. Pursuant to the inquiry, an order of dismissal was passed by the disciplinary authority and charges No. 1, 2, 5 and 7 were proved against the petitioner and after having taken into consideration all the aspects of the matter, the disciplinary authorities have passed the order of termination. It is in conformity with the ratio laid down by the Apex Court in the abovereferred decision, wherein it is specifically held that once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. It was also held that in case of proved misappropriation, there is no question of considering past record. In case of the petitioner, the past record is also not clean and the petitioner has met with several punishments for committing various misconducts. In such a situation, it is the discretion of the management to consider the punishment which is to be inflicted on the petitioner and once this decision is arrived at, this Court should not substitute the penalty

or punishment so imposed by the respondents on the petitioner.

8. In view of the facts and circumstances of the case, and in view of the settled position of law, I am of the view that the disciplinary authorities have rightly passed the order of termination and there is nothing on record which shocks the conscience of this Court so as to take a different view with regard to the penalty imposed on the petitioner. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]